

REMARKS

In Applicant's previous response, the claims of the present application were amended and placed in the form of method claims to clearly reflect that the herbicidal synergistic compositions of the present invention are used for the selective control of broad-leaved weeds and grasses in crops made resistant to protoporphyrinogen oxidase inhibitors. Claim 24 has been amended to correct an obvious typographical error. No new matter has been added.

The present invention relates to a herbicidal synergistic composition for the selective control of broad-leaved weeds and grasses in crops made resistant to protoporphyrinogen oxidase inhibitors comprising as active compounds a mixture of

- a) a herbicide which inhibits the action of protoporphyrinogen oxidases in plants (= protoporphyrinogen oxidase inhibitors = PPO inhibitors) and
- b) at least one further pesticide selected from the group consisting of co-herbicides, fungicides and insecticides/acaracides,

which protects the useful genetically transformed crop plants but not the weeds from the phytotoxic action of the herbicidal composition.

As mentioned on page 1, fourth paragraph of the specification, the PPO inhibitors under a) and the co-herbicides under b) useful in the present composition are known. An essential feature of instant invention, which is neither taught or suggested by the prior art, is to provide a composition of defined PPO inhibitors a) and at least one known pesticide e.g. a co-herbicide b) which composition when applied to PPO inhibitor resistant crops leads to synergistically improved and economically relevant toxic effects to said pest organisms, e.g., phytotoxic effects against unwanted weeds, without being harmful to the useful crop plants simultaneously, i.e., without leading to comparable synergistically enhanced phytotoxic effects on the PPO inhibitor resistant crop plants.

Claims 22-34, 37 and 38 have been rejected under 103(a) as allegedly being unpatentable over Hudetz et al. and Devine et al. Applicants respectfully traverse.

As described above, the claims of the present application have been amended to clearly require the presence of a PPO-inhibitor resistant crop. Hudetz fails to teach this limitation and Devine fails to overcome the deficiencies of Hudetz. The Examiner applies essentially the identical rationale for rejecting the instant claims as was used in rejecting the composition of matter claims in the previous office action. Hudetz or Devine both fail to teach or reasonably suggest the methods of the present claims. Both references fail to provide any rationale for applying the claimed mixtures to PPO resistant crops. The Examiner indicates on page 4, lines 7-10 of the outstanding

office action that claims 35 and 36 drawn to safened butafenacil compositions comprising the safener cloquintocet, would be allowable. Applicants assert that claim 22 is functionally defined by the result of the invention, i.e., PPO inhibitors under a) can be used to control weeds in the claimed transgenic crop plants in the absence of safeners as the instant method is directed specifically to crops of useful plants made resistant to PPO inhibitors.

The Examiner's reliance on the Hudetz teaching that the Hudetz mixtures can be used in crops resistant to imidazolinone herbicides, provides no suggestion that the mixtures could be used in crops made resistant to PPI inhibitors. This reliance is clearly improper hindsight used by the Examiner in view of Applicants' invention. The Devine reference fails to remedy the deficiencies of Hudetz.

As demonstrated in the Declaration of Daniel North filed March 4,2002, the method of the present invention clearly exhibits synergistically improved control of weeds with a synergistic enhancement of crop safety. These effects are neither taught nor clearly suggested by the prior art of record.

In view of the above amendments and arguments, Applicants respectfully submit that the rejection under 35 U.S.C. § 103(a) has been overcome and hereby request that this application be passed to issue.

As this response is submitted within 1 month from the mailing date of the Office Action, a one-month extension of time is included herewith.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,



Thomas Hamilton
Attorney for Applicant
Reg. No. 40,464

Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7586

Date: *May 24, 2004*